

(2017) 02 MP CK 0170
In the Madhya Pradesh High Court
Case No : 891-2014

Dinesh S/o Ranchhor Pawar

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 20-02-2017

Acts Referred:

Indian Penal Code, 1860, Section 354 -
Assault or criminal force to woman with intent to outrage her modesty
Protection Of Children From Sexual Offences Act, 2012, Section

Citation : (2017) 02 MP CK 0170

Hon'ble Judges : J. P. GUPTA

Bench : Single Bench

Advocate : Rajesh Kumar Gupta, Akhilesh Singh

Judgement

1. This appeal has been preferred from the jail against the impugned st judgment dated 11/02/2013 passed by the 1 Additional Sessions Judge, Katni in Special Case No.73/2013 whereby the appellant has been convicted for the offence punishable under sections 9(dha) read with section 10 of POCSO Act and sentenced to 5 years R.I and fine of Rs.500/- in default of payment further R.I for 3 months.

2. In brief, relevant facts of the case are that the prosecutrix is a minor daughter of the appellant/accused. On 30/09/2013 in the night the prosecutrix was sleeping with her mother, appellant/accused came caught her and starting drawing her hand with bad intention. When she make hue and cried, her mother wake up and tried to get rid of appellant but appellant/accused insisted to her wife to handover the prosecutrix to him, so that he will fuck her and used filthy language. Anyhow mother of the prosecutrix saved the prosecutrix and took her into the house of her relative. Thereafter next day morning FIR was lodged against the appellant/accused in the police station Kuthla, District Katni as Crime No.310/2013 and after completion of the investigation, charge sheet was filed against the appellant. He was tried for the aforesaid offences. His defence was

that he is innocent and the prosecutrix and her mother/his wife were insisted to send him to jail, since they were feeling uncomfortable with him. After trial, learned lower court convicted and sentenced the appellant as mentioned above.

3. Learned counsel appointed by Legal Services Authority has submitted that the findings of learned lower court is contrary to law and appellant is innocent, therefore, his conviction and sentence be set aside. In this case, the prosecution has failed to prove the age of the prosecutrix below 18 years on the date of incident. In this regard evidence produced by the prosecution are not reliable, therefore hardly offence punishable under section 354 of the IPC is made out and appellant is in custody since 02/10/2013. Thus more than 3 years have been completed, therefore, he should be released on undergone imprisonment.

4. Learned Panel Lawyer has opposed the aforesaid contention and prayed for dismissal of the appeal as finding of the learned lower court is in accordance with law.

5. Having considered the contention of learned counsel for the parties and on perusal of the record, it is found that the statement of the prosecutrix (PW-1) and her mother Girja Bai (PW-2) are reliable. There is nothing to discard their statement and they have categorically stated the incident that on the relevant night while they were sleeping in the house, the appellant came and caught hand of the prosecutrix and started drawing with the bad intention and also expressed his sexual desire to be fulfilled with the prosecutrix by using filthy and bad words and anyhow prosecutrix saved by her mother. Hence it is proved that appellant being father of the prosecutrix made sexual assault on the prosecutrix.

6. Now the question is whether at the time of incident age of the prosecutrix was below 18 years. In this regard prosecutrix mother (PW-2) stated that she had no knowledge about date of birth of the prosecutrix and at the time of admission of the prosecutrix in the school she narrated her date of birth on the basis of assumption. Vinay Mohan Dubey (PW-4) has stated that he is working as teacher in the Government New Primary School, Kuthla. As per record of school prosecutrix was admitted in the school in the year 2008-09 and at that time her date of birth was recorded as 01/07/1996. The document of relevant entry is Ex.P-6 and certificate given on the basis of it is Ex.P-5. Further he has th stated that in his school prosecutrix was admitted in Class-6 and on the basis of transfer certificate her age has been recorded in the school. As earlier mentioned the mother of the prosecutrix has stated that she informed the fact of date of birth to the school authorities without any basis on tentative calculation based on her marriage and birth of children. In such circumstances, Ex.P-6 admission entry of 6th class is not much reliable document and not supported by any document or statement on which the date of birth have been mentioned. In such circumstances, on the basis of aforesaid evidence, it cannot be determined that the prosecution has proved the fact of age of the prosecutrix beyond reasonable doubt.

7. This incident of the year 2013 and in the year 2013 statement of the prosecutrix has been recorded before the court where she has disclosed her age 17 years. Similarly her mother (PW-2) has also stated age of prosecutrix near about 17-18 years. In such circumstances, it cannot be denied that age of the prosecutrix on the date of incident may be above 18 years. Therefore, in this regard finding of the learned lower court cannot be accepted and it is held that prosecutrix age below 18 years has not been proved beyond reasonable doubt.

8. In view of the aforesaid discussion and finding, appellant conviction under sections 9(dha) read with section 10 of POCSO Act has not been found proved beyond reasonable doubt, but offence punishable under section 354 of the IPC is found to be proved beyond reasonable doubt. Therefore, appellant's conviction and sentence under aforementioned sections of POCSO Act is set aside. It is proved that appellant committed offence punishable under section 354 of IPC for which he was charged and in view of the other grievous offences, he was exonerated, therefore, in this case he is convicted under section 354 of the IPC.

9. So far as question of sentence is concerned, appellant is in custody since 02/10/2013 till today, therefore, he is sentenced to the period already undergone and it would meet the end of justice. Accordingly, he is sentenced to the period already undergone in this case. As the appellant has undergone all the sentence, hence if he is not required in any other case, he be released forthwith from jail.

A copy of this judgment be sent to the concerned trial court and jail authorities for information and necessary action. Certified copy as per rules.